87-45

No.

Supreme Court, U.S.
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IN THE
Supreme Court of the United States
October Term 1987

JAMES B. LUND AND INGRID LUND,
Appellants,

v.

COUNTY OF HENNEPIN,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

JURISDICTIONAL STATEMENT

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STATE OF MINNESOTA

QUESTIONS PRESENTED

1. Does the graduated homestead tax classification under Minn. Stat. Section 273.13 subd. 7 (1984) violate equal protection and due process clauses of USCA Const. Amend. 14?

2. Does Minn. Stat. Section 273.13 subd. 7, which assess homestead property at different graduated rates based on a determination that property value is an indication of ability to pay, violate equal protection and due process clauses of USCA Const. Amend. 14?

3. Does Minn. Stat. Section 273.13 subd. 15a providing for use of general revenue funds to replace reductions in homestead property tax revenue violate equal protection and due process clauses if USCA Const. Amend. 14?

4. Is 5% real estate tax based on market value confiscatory under due process clause of USCA Const. Amend. 14?

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IN THE

Supreme Court of the United States

October Term 1987

James B. Lund and Ingrid Lund,
Appellants,

vs.

County of Hennepin (Minnesota)
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

JURISDICTIONAL STATEMENT

Appellants request that the Court accept jurisdiction of this appeal and reverse the judgement below.

OPINIONS BELOW

The decision of the Tax Court of Minnesota, finding that homestead real estate tax assessment classifications, Minn. Stat. Section 273.13 Subd. 7, Class 3C is constitutional is unreported (Appendix B). The opinion is dated and filed October 30, 1985.

The opinion of the Supreme Court of Minnesota upholding the Tax Court judgement and Minn. Stat. Section 273.13 subd. 15a is reported in 403 N.W.2d 617 (Minn. 1987) (Appendix C). The opinion is dated and filed April 3, 1987. The notice of appeal was filed with the Minnesota Supreme Court on April 29, 1987.

JURISDICTION

Constitutional questions were raised in the Tax Court without citation and in the Minnesota Supreme Court, which cited the equal protection clause of Amend XIV U.S. Constitution as well as the due process clause of said amendment. Upholding the statute on

the basis of the U.S. Constitution presents important federal constitutional questions which this court has jurisdiction to review under Title 28 U.S.C. Section 1257(2). Near vs. Minnesota ex rel Olson 283 U.S. 697.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Class 3C property under Minn. Stat. Section 273.13 subd. 7 (1984) provides in part:

"All * * * real estate * * * used for the purposes of homestead * * * shall be valued and assessed as follows:

> The first $30,000 of market value at 17%,
> the next $30,000 of market value at 19%,
> remaining market value at 30%.
> The property tax to be paid on class 3C
> property shall be reduced by 54% of the
> tax imposed on the first $67,000 of market
> value. The amount of reduction shall not
> exceed $650."

General revenue funds are used to pay for revenue loss due to homestead tax reductions Minn. Stat. Section 273.13 subd. 15(a).

Minn. Constitution Article X section 1 of the Uniformity Clause states: "Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes. . ." which the Minnesota Supreme Court says conforms to federal equal protection.

Equal protection and due process are required under Amend. XIV U.S. Constitution.

STATEMENT

Taxpayers' residence was valued at $148,800 and assessed under Minn. Stat. Section 273.13 subd. 7. The assessment was held

not to violate equal protection and the 4.9% tax on the market value was held as not confiscatory (due process).

Constitutionality was raised in the Tax Court decision, merely citing that the statutes were constitutional.

Equal protection and due process clauses of Amend. XIV U.S. Constitution, and Article X, Section 1 of the uniformity clause of the Minnesota Constitution and levy of taxes for public purposes specifically were raised in the Minnesota Supreme Court with requests for Amicus briefs.

In both the Tax Court and the Minnesota Supreme Court the parties raised constitutionality questions in their briefs and the constitutionality of the statutes and the assessment were upheld by both courts, holding that the three classifications of homestead, the reduction of 54% on the first $67,000 of market value not exceeding $650, said reduction being replaced and paid by taxes levied from the state's general fund and a 4.9% tax were constitutional.

Whether general revenue funds can be used to replace homestead tax reductions and whether the tax is confiscatory were raised by the Minnesota Supreme Court.

In upholding its prior 1934 Depression decision, the Minnesota Supreme Court stated the Legislature may take into consideration the ability to pay in classifying property for the purpose of taxation.

THE QUESTIONS ARE SUBSTANTIAL

Minnesota's real estate tax classification system has been labelled the most difficult in the country.

Discrimination in the assessment method causes a severe hardship on owners of homes of higher assessed value based on unequal burden. An ad valorem real estate tax on a $120,000 home may be three times as much as on a $60,000 home because the base

value against which the mill levy is made rises progessively.

The 1933 Minnesota Homestead Tax Law did not provide for a system of two classifications of homesteads with value assessed on a graduated scale, but created for the first time, a homestead exemption for the purpose of real property taxation of the first $4,000 of full and true value. The act did not set classifications, except as to non-platted and platted property which classifications had existed before.

Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes. Minnesota Constitution Article X, Section 1, not changed since 1906, was not intended to allow progressive taxation of property.

The classification opens the door to arbitrary action allowing legislators to pick and choose only a few to whom they will apply the legislation and thus escape the political retribution that might be visited upon them if larger numbers were affected, thereby preferring political plaudits to equal protection. Mr. Justice Jackson in Railway Express Agency vs. N.Y. 336 U.S. 106, 111-113.

A graduated homestead tax schedule can be sustained only by taking into account valuation per capita, income per dwelling, number of occupants per dwelling and income level of the occupants, 56 Minn. L.R. 1121, 1155.

CONCLUSION

The Court should note probable jurisdiction.

Respectfully submitted,

James B. Lund
Counsel of Record

APPENDIX A

CONSTITUTIONS PAGE

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Citizenship rights not to be abridged by states.

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Minn. Const. Art. X

Section 1. Power of taxation; exemptions legislative powers.

Section 1. The power of taxation shall never be surrendered, suspended or contracted away. Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes, but public burying grounds, public school houses, public hospitals, academies, colleges, universities, all seminaries of learning, all churches, church property, houses of worship, institutions of purely public charity, and public property used exclusively for any public purpose, shall be exempt from taxation except as provided in this

section. There may be exempted from taxation personal property not exceeding in value $200 for each household, individual or head of family, and household goods and farm machinery as the legislature determines. The legislature may authorize municipal corporations to levy and collect assessments for local improvements upon property benefited thereby without regard to cash valuation. The legislature by law may define or limit the property exempt under this section other than churches, houses of worship, and property solely used for educational purposes by academies, colleges, universities and seminaries of learning.

Statutes
Tit. 28 U.S.C.
Section 1257. State Courts; appeal; certiorari

Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

For the purpose of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

MINNESOTA STATUTES SECTION 273.13

Subd. 7. Class 3c. All other real estate and class 2a property, except as provided by classes 1 and 3cc, which is used for the purposes of a homestead, shall constitute class 3c, and shall be valued and assessed as follows: the first $30,000 of market value shall be valued and assessed at 17 percent; the next $30,000 of market value shall be valued and assessed at 19 percent; and the remaining market value shall be valued and assessed at 30 percent. The maximum amounts of the market value of the homestead brackets subject to the 17 percent and 19 percent rates shall be adjusted by the commissioner of revenue as provided in section 273.1311. The property tax to be paid on class 3c property as otherwise determined by law, less any reduction received pursuant to sections 273.123 and 473H.10 shall be reduced by 54 percent of the tax imposed on the first $67,000 of market value. The amount of the reduction shall not exceed $650.

Subd. 15a General fund, replacement of revenue. (1) Payment from the general fund shall be made, as provided herein, for the purpose of replacing revenue lost as a result of the reduction of property taxes in subdivisions 6, 7, and 14a.

APPENDIX B

STATE OF MINNESOTA — TAX COURT

COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

James B. Lund and
Ingrid Severson Lund,

Petitioners,

vs.

County of Hennepin,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

The above matter was tried by the Minnesota Tax Court, Judge Carl A. Jensen presiding, on July 24, 1985 at the Hennepin County Government Center in Minneapolis, Minnesota.

James B. Lund, Attorney and one of the petitioners, appeared on his own behalf.

Earle F. Tighe, Assistant Hennepin County Attorney, appeared on behalf of respondent.

Briefs were subsequently filed by the parties.

SYLLABUS

Any reasonable classifications of property by the legislature for the purposes of taxation of real property are constitutional.

FINDINGS OF FACT

1. Petitioners have appealed from the property taxes levied on their homestead, which is located at 4815 Sheridan Avenue South in Minneapolis, Minnesota.

2. The assessor's value for petitioners' property as of January 2, 1983 was $148,800. Petitioners do not contest this valuation.

3. Petitioners contend that Minn. Stat. Section 273.13, subd. 7, Class 3C, relative to homestead property, is unconstitutional on the basis that it does not levy taxes uniformly on the same class of subjects. That statute provides that

the first $30,000 of market value is assessed at 17% of full value, the next $30,000 of market value is assessed at 19% of value, and the remaining market value is assessed at 30% of market value.

Petitioners contend that the varying percentages result in unequal taxes contrary to constitutional provisions requiring that taxes shall be uniform on the same class of subjects.

4. The Court finds that the statutes classifying the property as indicated above do, in fact, levy taxes on a uniform basis on the same class of subjects and said statutes are constitutional.

CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

1. Minn. Stat. Section 273.13, subd. 7, Class 3C, which provides for different assessed values for homestead property depending upon the market value of the property is constitutional and the

assessment of petitioners' property for January 2, 1983 is affirmed in all respects.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

BY THE COURT,

/S/

Carl A. Jensen, Judge
Minnesota Tax Court

DATED: October 30, 1985.

MEMORANDUM

Petitioners have appealed from the assessment of their homestead as of January 2, 1983. The assessor placed a value of $148,800 on the property as of that date and petitioners do not contest that value.

After establishing this market value, the assessor applied the various assessed values provided for in Minn. Stat. Section

273.13, subd. 7, Class 3C, in order to arrive at the taxable value to which the tax rate is applied. The various assessed values for homestead property provided in that statute are as follows:

First $30,000 of Market Value	17%
Next $30,000 of Market Value	19%
Remaining Market Value	30%

Petitioners contend that using these classifications in arriving at the taxable value results in unequal taxation.

Petitioners state in their brief that graduated or progressive taxation cannot be applied to homestead property, and they cite Reed v. Bjornson, 191 Minn. 254, 253 N.W. 102 (1934). That case involves progressive rates for income taxes. It is true that the case discusses a possible distinction between income and property taxes, but, if anything, that case appears to confirm the constitutionality of progressive taxes for both income and

property taxes. Part of that decision reads as follows:

> Whether or not income is property and a tax thereon a tax on property Article IX, Section 1, of our constitution requires all taxes to be uniform on the same class of subjects, not merely on the same class of property as in some state constitutions. Obviously incomes constitute a subject of taxation, and the uniformity clause applies regardless of whether or not the tax is upon property as such.

Thelegislature has a broad power to classify property for tax purposes. In Hegenes v. State, 328 N.W.2d 719 (Minn. 1983), the Supreme Court stated the following:

> We have often observed that a taxpayer carries a heavy burden in challenging a tax statute under the uniformity clause.

Petitioners indicate in their brief that questioning various percentage assessments for homesteads requires petitioners to also allege that providing different percentage assessments for any residential properties denies equal

protection. The Hegenes v. State case, supra, considered that very question and found that it was constitutional for the legislature to provide a different percentage assessed value for apartment buildings containing three or less units and apartment buildings containing four or more units.

Petitioners contend that it is unconstitutional to assess homestead property at a different rate than apartment property since they are both residential property. The Supreme Court settled this exact issue in Apartment Operators Assn. v. City of Minneapolis, 191 Minn. 365, 254 N.W. 443 (1934).

Petitioners also raise the issue of the constitutionality of the provision that applies a credit on the first $650 of taxes. Petitioners contend that this constitutes an exemption from taxes in

violation of Minnesota Constitution Article XII, Section 1, which states in part as follows:

> The legislature shall pass no local or special law . . . exempting property from taxation. . .

Petitioners contend that these classification statutes are special laws because a general law must affect equally all of a group. Petitioners make the following statement in their brief:

> A person in possession of real property normally called a homestead whether as an owner or a renter belongs to the same class and are naturally related possessing certain qualities or situations. Creating a preference for an owner occupier as against a renter occupier creates a preference and establishes an inequality.

The constitution does provide for certain exemptions for taxation of real property and authorizes the legislature in some other respects, but even if the credit provision referred to above is considered an exemption, the Minnesota

Supreme Court in Reed v. Bjornson, supra, stated the following:

> Respondent contends that the exemptions are forbidden by the construction we have placed on our constitution and that the enumeration of compulsory exemptions excludes the power to make others. We hold that the enumeration of exemptions in our constitution does not forbid making others which do not offend the uniformity clause or the federal constitution. The power to fairly exempt is inherent in the power to tax.

Petitioners contend that the value of a person's homestead does not necessarily indicate the ability to pay since a highly valued homestead may have a large mortgage. Ability to pay is not a requirement of the constitution or statute, but even if it were, a person living in a more expensive house is quite likely to have a greater aiblity to pay even though he may have a large mortgage.

We find that the tax statutes are uniform since they affect the same classes

of property and the same classes of people in the same way. Although they may be uniform, they may not always be equitable It is much more difficult to arrive at equity than uniformity.

Philosophically we can agree with petitioner to the extent that all residential property should be taxed in the same way. Any tax levied on apartment property is necessarily paid by the tenants. In many cases renters are less able to pay than homestead owners. The legislature has attempted to correct this inequity by providing for rent credits. It appears that in some cases the rent credit gives more relief than would be proper, and in some cases the rent credit gives less relief than proper. This results because the rent credit takes into consideration the income of the person claiming it. These are, however, legislative matters.

APPENDIX C

STATE OF MINNESOTA

IN SUPREME COURT

C9-85-2106

Tax Court

Amdahl, C.J.
Dissenting, Yetka, J.,
Wahl, J.,
and Kelly, J.

James B. Lund and
Ingrid Lund,

Relators

vs.

County of Hennepin,

Respondent.

Filed April 3, 1987
Wayne Tschimperle
Clerk of Appellate
Courts

S Y L L A B U S

1. Minn. Stat. Section 273.13, subd. 7 (1984) (repealed 1985), did not violate equal protection or due process clauses of the federal constitution.

2. Minn. Stat. Section 273.13, subd. 7, did not violate uniformity clause of the state constitution and did not constitute special legislation exempting taxation.

3. Minn. Stat. Section 273.13, subd. 15a (1984), could constitutionally provide for use of general revenue funds to replace reductions in homestead property tax revenue.

4. Rate of taxation on relators' homestead property is not invalid or unconstitutionally excessive.

Affirmed.

Heard, considered, and decided by the court en banc.

O P I N I O N

AMDAHL, Chief Justice.

Relators James and Ingrid Lund petition this court on writ of certiorari to review the decision of the Tax Court upholding an assessment of homestead property taxes on realtors' property. The Tax Court held that the statutory scheme for determining homestead property taxes is valid under the federal and state

constitutions. We affirm.

The relevant facts are not in dispute. Relators own homestead property in Minneapolis. The county assessor valued realtors' property at $148,800 as of January 2, 1983. Relators' property was defined as class 3c property under Minn. Stat. Section 273.13, subd. 7(1984).[1] That statute provided in part:

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[1] Section 273.13, subd. 7, has been repealed and replaced by Minn. Stat. Section 273.13, subd. 22(1986), which states:

> (a) Except as provided in subdivision 23, real estate which is residential and used for homestead purposes is class 1. The market value of class 1a property must be determined based upon the value of the house, garage, and land.
>
> The first $64,000 of market value of class 1a property must be assessed at 18 percent of its market value. The homestead value of class 1a property that exceeds $64,000 must be assessed at 28 percent of its value. (cont.)

> All * * * real estate * * * used for the purposes of a homestead, * * * shall be valued and assessed as follows: the first $30,000 of market value shall be assessed at 17 percent; the next $30,000 of market value shall be valued and assessed at 19 percent; and the remaining market value shall be valued and assessed at 30 percent. * * * The property tax to be paid on class 3c property * * * shall be reduced by 54 percent of the tax imposed on the first $67,000 of market value. The amount of the reduction shall not exceed $650.

Relators' property was taxed accordingly including a reduction of $650 from the assessment, as statutorily provided. On appeal to this court, relators present several constitutional challenges to the homestead taxing scheme. Before addressing relators' arguments,

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> (d) The tax to be paid on class 1a or class 1b property, less any reduction received pursuant to sections 273.123 and 473H.10, shall be reduced by 54 percent of the tax imposed on the first $68,000 or market value. The amount of the reduction shall not exceed $700.

it is important to note the standard of review applied by this court. Where a party challenges a statute as unconstitutionally this court will not strike down the statute unless "the party challenging it demonstrates beyond a reasonable doubt that the statute violates some constitutional provision." Miller Brewing Co. v. State, 284 N.W.2d 353, 356 (Minn 1979). As stated by the United States Supreme Court, "those challenging the legislative judgment must convince the court that the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker." Vance v. Bradley, 440 U.S. 93 (1979); see also Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464 (1981). In the context of challenges to a state taxing scheme, the United States Supreme Court has been

especially deferential. In San Antonio Indep. School Dist. v. Rodriquez, 411 U.S. 1 (1973), the Court rejected an equal protection challenge against an ad valorem property tax to supplement educational financing. The Court stated:

> No scheme of taxation, whether the tax is imposed on property, income, or purchases of goods and services, has yet been devised which is free of all discriminatory impact. In such a complex arena in which no perfect alternatives exist, the Court does well not to impose too rigorous a standard of scrutiny lest all local fiscal schemes become subjects of criticism under the Equal Protection Clause."

411 U.S. at 41.

Relators challenge the taxing scheme under both the equal protection clause and article X, Section 1 of the Minnesota Constitution, commonly known as the "Uniformity Clause."[2]

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[2] The uniformity clause requires that: "Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes * * *."

We have determined that the state uniformity clause is no more restrictive upon the state legislature's power to tax or classify than the federal equal protection clause, and that an analysis under equal protection is applicable to the state constitutional challenge. See, e.g., Hegenes v.State, 328 N.W.2d 719, 720-21 (Minn. 1983); Matter of McCannell, 301 N.W.2d 910, 916 n.4 (Minn. 1980).

Relators argue first that the statute violated equal protection because it provided for homestead property to be assessed at different graduated rates, based on the estimated value of the house. We find that relators have not met the difficult burden of proof of showing that this scheme of taxation violated equal protection. In Apartment Operators Ass'n v. City of Minneapolis, 191 Minn. 365, 254, N.W. 443 (1934), we held a statute

constitutional which gave tax preference to homesteads of $4,000 or less, determining that "ability to pay may properly be taken into consideration by the legislature, in classifying property for the purpose of taxation." Id. at 370, 254 N.W. at 445.

We hold that our decision in Apartment Operators is controlling on this issue. Relators provide no evidence showing that the legislature could have reasonably determined that market value of property gives some indication of the ability to pay, and accordingly decided to tax homesteads to reflect market values. In the absence of any such showing, we are compelled to reject relators' argument.

Relators also challenge the homestead tax based on its distinction between owners and renters. Relators argue that creating a preference for an owner occupier over a renter occupier creates a

preference and establishes an inequality. In Miller Brewing, this court enunciated the test to determine the constitutionality of statutory classifications:

> (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs; (2) the classification must be genuine or relevant to the purpose of the law; that is, there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

284 N.W.2d at 356.

In the present case, the preference given to homestead property "has a tendency to encourage the use of land for homestead purposes and is in furtherance of a sound public policy. The stability of government is promoted thereby." Apartment Operators, 191 Minn. at 369,

254 N.W. at 445. The state may promote homestead ownership as a legitimate goal. To achieve this end, the legislature could have reasonably found that reduced tax liabilities for homestead owners encourages individuals to purchase homestead property and provided benefits to homeowners, who face greater maintenance costs and risk of substantial loss. The distinction between owner occupiers and renter occupiers is genuine, not fanciful, in light of the added responsibilities of homeowners and their different relation to the property from renters.[3] These distinctions justify the different tax treatment between homestead owners and

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[3] Relators fail to acknowledge an important distinction between homestead property and rented residential property-the rental property represents income-producing property to the owner. The legislature could also take this distinction into account in deciding to tax non-homestead residential property differently from homestead property.

renters.[4] Relators also argue that the taxing statute violates due process because it constitutes "special legislation" exempting property from taxation. We have determined that a statute is invalid as special legislation if it arbitrarily classifies subjects or if it does not "include and operate uniformly upon all [members] of the class. * * *." Duluth Banking Co. v. Koon, 81 Minn. 486, 490 84 N.W. 335, 337(1900). In the present case, we have already determined that the classification of homestead

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[4] The legislature has attempted to reduce the discrepancy between property taxes paid by owners and renters through the State of Minnesota Property Tax Refund Act, Minn. Stat. ch.290A. Under this act, both owners and renters are eligible for property tax credits based on household income and property tax paid. The maximum refund under chapter 290A. is $1,125. It is important to note that any refunds to homestead owners under chapter 290A were reudced by the homestead credit provided under Minn. Stat. Section 273.13, subd. 7. See Minn. Stat. Section 290A.04, subd. 2b (1984).

property is valid. The remaining issue is whether the statute taxed all members of each class under a uniform scheme. Relators have not provided any showing that members of the same class who are similarly situated are treated differently. We therefore find that realtors have not shown beyond a reasonable doubt that Minn. Stat. Section 273.13 violates due process.

Relators next argue that the reduction in taxes for homestead owners is an exemption and is invalid because exemptions from taxation may only be made by constitutional amendment. In Elwell v. County of Hennepin, 301 Minn. 63, 221 N.W. 2d 538 (1974), this court addressed the validity of Minn. Stat. Section 273.111, referred to as the "green acres Statute," which provides a reduced tax assessment for agricultural land "determined solely with reference to [the property's]

appropriate agriculture classification and value * * *." Section 273.111, subd. 4(1986). Appellant Hennepin County argued that the valuation method under the green acres statute was unconstitutional because it was not specifically authorized. This court determined that the statute was not an exemption statute but a classification of property was reasonable. Id. at 74-75, 221 N.W.2d at 546. In the present case, we have determined that the homestead classification is valid. We thus conclude that the challenged legislation is not an invalid exemption statute but instead a statute which reasonably classifies property.

Relators also challenge the use of general revenue funds to replace homestead tax reductions. Minn. Stat. Section 273.13, subd. 15a (1984), provided for payment from the general fund for the

purpose of replacing revenue lost as a result of the reduction in property taxes provided under subdivisions 6, 7, and 14a of the statute. Relators argue that such use of general revenue funds is improper. We disagree.

In Village of Burnsville v. Onischuk, 301 Minn. 137, 222 N.W.2d 523 (1974), appeal dismissed, 420 U.S. 916 (1975), we determined whether Minn. Stat. ch. 473F (1974), the "Metropolitan Fiscal Disparities Act," violated the state constitution. Chapter 473F pooled commercial property taxes collected in a seven-county area and redistributed them in a manner which provided more funds to areas with less commercial development than had been collected from them. We found the statute did not violate the state constitutional requirement for uniformity of taxes. Id. at 153-54, 222 N.W.2d at 532-33.

Applied to the taxing scheme at

issue, Onischuk indicates that distribution of general revenue funds in varying amounts as credits to homeowners does not violate the uniformity clause of the state constitution. Relators provide no other showing that the use of general revenue funds to promote homeownership is constitutionally improper.[5] We therefore hold that Minn. Stat. Section 273.13, subd. 15a, validly provided for use of general revenue funds to replace amounts reduced by the homeowners' exemption.

Finally, we are presented with the issue of whether there is some limit on the amount at which property may be taxed.

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[5] In fact, several other property classes receive tax relief through general revenue funds, including agricultural homestead property, Minn. Stat. Section 273.13, subd. 23 (1986); homestead structures located on property not owned by the occupant, Minn. Stat. Section 273.124, subd. 7a (1986); and state paid wetlands, Minn. Stat. Section 273.115 (1986).

For example, could the state tax a $100,000 piece of property at the rate of $100,000 per year? We need not determine what, if any, upper limit exists on property taxes. In the present case, the record indicates that relators' property was taxed at approximately 4.9%. This rate of taxation is clearly not excessive.

In summary, we hold that relators have not shown beyond a reasonable doubt that the homestead property taxing scheme violates either the state or federal constitution.

Affirmed.

WAHL, Justice (dissenting).

I have reexamined Apartment Operators Ass'n v. City of Minneapolis, 191 Minn. 365, 254 N.W. 443 (1934) in light of Justice Yetka's dissent and have concluded that our decision there does not control our decision in this case as to whether

Minn. Stat. Section 273.13, subd. 7 (1984) violates the equal protection clause of the fourteenth amendment of the United States Constitution and article X, Section 1, the uniformity clause of the Minnesota Constitution. Minnesota Statutes, chapter 359, enacted in 1933, did not, in fact, provide for a system of two classifications of homesteads with value assessed on a graduated scale. Rather the legislature created, for the first time, a homestead exemption, one homestead exemption, for the purpose of real property taxation. For both class 3b unplatted real estate and class 3c platted real estate, the first $4,000 of true and full value constituted the homestead exemption. This exemption, as Justice Yetka has suggested, would have covered all homes which today would be valued up to and well in excess of $100,000. In both classes of property, unplatted and

platted, under the 1933 act, the value of real estate used for homestead purposes which exceeded $4,000 was assessed and taxed as non-homestead property at the rate applicable to each class for property unaffected by the exemption. In contrast, under Minn. Stat. Section 273.13, subd. 7, the homestead exemption afforded class 3c real property is divided into three classifications according to the value of the homestead and assessed at a graduated rate. In my view, such a scheme does not comport with the constitutional mandate that taxes must be "uniform on the same class of subjects." "Ability to Pay," as used by the Apartment Operators court, referred to the ability of homeowners owning a homestead of greater value than that afforded by the exemption to pay the higher non-homestead rate for the remaining value. It did not give

constitutional approval for graduated rates within the homestead exemption itself.

I join the dissent of Justice Yetka.

KELLY, Justice (dissenting).

I join the dissents of Justices Yetka and Wahl.

YETKA, Justice (dissenting).

Article X, section 1 of the Minnesota Constitution requires taxes to be "uniform upon the same class of subjects * * *." Because I find that language to be clear and unambiguous and because all owners of homestead property constitute a single class, I would find that a tax that attempts to assess different homeowners at different rates violates the aforesaid provision.

The history of the adoption of our United States and Minnesota constitutions reveals that our founding fathers were intent on a written document which defined

the powers given to the government by the people. The founders wished to remind future generations that all people have certain inalienable rights; that constitutional documents limited the exercise of power, as well as delegated it; and that those powers not delegated to the government remained with the people. Article X, section I was clearly intended to be a limitation on the power to tax.

You are either a homeowner or you are not. Realistically, it cannot be said that homeowners who are assessed at one rate if their homes are worth $30,000, another at $60,000 and a third if over $60,000 are taxes by laws "uniform upon the same class of subjects." I think the majority opinion misinterprets this court's decision in Apartment Operators Ass'n v. City of Minneapolis, 191 Minn. 365, 254 N.W. 443 (1934). That case was decided in the midst of the Great

Depression when the legislature felt compelled to limit real estate taxes in order to protect people's homes. The legislature decided that the value of homesteads up to $4,000 would be assessed as non-homestead property. The legislature has always had the right to define what a homestead is and that's all it did in Apartment Owners. Any other language was unnecessary to decide that case and is pure dicta. Because of the method used in arriving at assessed valuation and because of the inflation over the past half century, a home with an assessed valuation of $4,000 in 1933 might be equal to a home worth well in excess of $100,000 today. Thus, if the legislature adopted a statute defining a homestead as a home not exceeding $100,000 and taxed it at a lower rate than other real estate, we would have the situation presented in Apartment Operators.

The pertinent language of the current article X, section 1 was adopted in 1906 in what was then article 9, section 1 of the state constitution. Minn. Const. of 1857, art. 9, Section 1 (1906). Prior to 1906, article 9, section 1 provided that taxes be "nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation and be equalized and uniform throughout the state." Minn. Const. of 1857, art. 9, Section 1. It is clear that the 1906 amendment gave the legislature greater latitude, but it is also noteworthy that the new amendment retained in the constitution the restriction that taxes should be "uniform upon the same class of subjects." Clearly, the amendment was not intended to allow the progressive taxation of property. The Sixteenth Amendment to the United States Constitution only became

effective in 1913, and, prior to its adoption, it was assumed that a progressive income tax was impermissible. Minnesota itself did not adopt an income tax until 1933. Those drafting the 1906 amendment could not have contemplated taxing real estate in a manner not even allowed for income.

A property tax is entirely different from an income tax. The latter is, quite rightly, a progressive tax, with both the amount and the rate of the tax rising with income and, thus, the ability to pay. The property tax, on the other hand, is a so-called ad Valorem tax, a tax according to value. If a tax of 1% were levied against the value of property, the net tax in dollar amounts might differ on different parcels of land, but the percentage of the tax would still be the same and would be an equal burden according to the

property's value. Therefore, if real estate had a $50,000 value, 1% would yield a $500 tax and a $100,000 parcel of real estate would have a tax of $1,000. The rate is the same, but the burden is based on value.

However, the law which is the subject of this litigation assessed the first $30,000 of property at 17%, the second $30,000 at 19% and all value over $60,000 at 30%. The result could mean a net tax on a $120,000 home would be not just double that of a $60,000 home, but over three times as much. That would be so because the base value against which the mill levy is made rises progressively.

It may be true that there is some overall relationship between the value of a person's home and his or her ability to pay taxes. However, if the extremes of simple hovels and wealthy mansions were

excluded, it is also true that, in very many cases, there is no relationship at all. For some, a home is a luxury on which they lavish a disportionate part of their income and wealth. For others, it is merely a necessity, a place to go to and spend as little time as possible. Two persons could work at the same place of business and have identical incomes; yet, one might own a home worth $30,000 and the other $100,000. Quite naturally, at the same rate of tax, the $100,000 home would pay more, but why should the rate be higher too?

The court, in Apartment Operators, in upholding putting homesteads in two classifications, said: "Placing homesteads in two classes on the basis of valuation was within the scope of the broad power of the legislature to classify property for the purpose of taxation." Id.,191 Minn. at 370, 254 N.W. at 445. The majority

opinion, in a footnote, points out that the legislature has apparently gone back to this two-class scheme, but this does not end the issue. Lund v. County of Hennepin, No. C9-85-2106, slip op. at 2 n.1 (Minn. 1987). If we uphold this scheme of taxation, there is nothing to prevent an even more progressive scheme from being adopted in the future. Envision an even more serious scenario: Suppose the legislature were to decide on a regressive scale, that is, reverse the tax structure here and assess all homes at the rate of 30% on the first $30,000; 19% on the second $30,000 and 17% over $60,000? The deputy attorney general at oral argument, when presented with that question, argued that, while the legislature could tax property progressively, it could not adopt a regressive scale because that would be unfair, unreasonable

and perhaps unconstitutional; yet, he could offer no legal authority as to why it would be unconstitutional. In my mind, if the legislature can do the one, it can do the other. The constitution is there to protect all, rich and poor alike, and that is precisely why it was written as it was.

The state argued further that, if the principles of this dissent were to be adopted, the result would be a loss in tax revenues, and should the legislature try to prevent such a loss, an increase in taxes on real estate of lower value would occur while those on expensive real estate would decrease. (The state's argument is one heard more and more frequently in this court and is best illustrated by this syllogism: This court's decision could have drastic consequences. Drastic consequences do, in fact, follow the court's decision; ergo, it was the decision of

the court that caused the consequences.) The state's argument is fallacious. It is so, first, because it assumes that the legislature would not be willing to assume a loss in revenue from a tax structure found to be invalid and, second, that there is no other way to reduce real estate taxes than by means of the very complicated tax assessment and classification system adopted in this state.

I will take the unusal step of outlining several things that the legislature can do to reduce the burden on all real estate. I do this not as an undertaking to offer alternative solutions, but simply because I believe that, all too frequently criticism is directed at the courts for causing problems by its decisions without outlining solutions to those problems. We are reluctant not because we are without ideas, but simply because, in the constitutional scheme of

separation of powers, it is the legislative branch which is given the power to tax and appropriate money. However, we are in a position to understand the legal and judicial systems.

In light of the language both in article X, section 1, which is the subject of this litigation, and article I, section 8 of our constitution,[1] the legislature might well consider more state funding of the courts and the criminal justice system as a whole. Why should local units of government-many impoverished-pay for the entire cost of public prosecution for crime and the state public defender system? Moreover, why should a poor rural

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[1] "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws." Minn. Const. art. I, section 8.

county be expected to pick up the entire cost for prosecuting a notorious criminal merely because the crime was committed in that county? Undoubtedly, similar arguments could be made for public education given the constitutional guarantee of a "general and uniform" system of public schools contained in article XII, section 1 of our constitution. If the state were to assume greater funding in these areas, all real estate taxes could be reduced.

The majority states that, in this case, realtor's property was taxes at only 4.9% of market value and goes on to hold that that rate of taxation is clearly not excessive. I disagree. I believe it is onerous and unreasonable. Under the present system, relator's property pays far more for governmental services than other parcels which require more of those same services but pay much less in taxes. Some property owners in this state may pay

as little as 1% of market value in real estate taxes. Relator pays five times more. Is that reasonable? Moreover, here, the owner will not only pay the purchase price of his property, but also pay for the property again in the form of taxes in the next 20 years if taxed at his present rate of nearly 5% per year of market value. An owner of real estate who pays more than twice for his property over the life expectancy of the improvements thereon should be found to suffer a burden invoking constitutional concerns.

The other issues dealt with in the majority opinion were not adequately briefed nor argued even though the court specifically called for amicus briefs from a number of organizations. Thus, I do not believe the court's opinion should be firm precedent thereon.

I believe the taxpayer in this case

has a legitimate complaint. If the constitutional phrase, "equal on the same class of subjects," is to mean anything, let us apply it; otherwise, we will return to those days prior to 1776 when we were a nation not of laws, but of men. The Constitution of the United States and that of the State of Minnesota constitute an island in the fast stream of life-mostly a totalitarian life. I fear that opinions of the courts which do not impose a strict construction of the clauses in the constitutions which protect individuals from unreasonable taxation will allow that island of freedom to erode away until it ceases to exist.

Nineteen eighty-seven is the year we celebrate the bicentennial of our United States Constitution. It is also the 130th anniversary of Minnesota's first constitutional convention in 1857. It should be the year that the rights guaranteed by

these constitutions are enhanced. I thus dissent.

WAHL, JUSTICE (dissenting).

I join the dissent of Justice Yetka.

KELLEY, Justice (dissenting).

I join the dissents of Justices Yetka and Wahl.

APPENDIX D

STATE OF MINNESOTA
IN SUPREME COURT
C9 - 85 - 2106

Tax Court

James B. Lund and Ingrid Lund,
Relators

vs NOTICE OF APPEAL

County of Hennepin,
Respondent

Notice hereby is given that James B. Lund and Ingrid Lund, Relators in the above case, appeal to the United States Supreme Court from this Honorable Court's decision of April 3, 1987.

This appeal is taken under the provisions of 28 U.S.C. §1257(2).

Minneapolis, Minnesota April 28, 1987.

Respectfully submitted,

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